

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Naval Air Station, Fallon, NV)

RAYTHEON AEROSPACE
SUPPORT SERVICES

Employer¹

And

Case 32-RC-4598

TEAMSTERS LOCAL NO. 533
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner²

ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, a Kansas corporation, which is a wholly owned subsidiary of Raytheon Aerospace Company, a Kansas corporation, which is, in turn, a wholly owned subsidiary of Raytheon Aircraft Company, a Kansas corporation, operates an aircraft maintenance facility located at the Naval Air Station, Fallon, Nevada. During the past twelve months, the Employer has directly sold products and provided services valued in excess of \$50,000 to the United States Navy (United States Department of Defense). Based on the foregoing, I find that the Employer is engaged in commerce

¹ The name of the Employer appears as amended by stipulation of the parties.

² The name of Petitioner appears as amended by stipulation of the parties.

³ Briefs filed by the parties have been duly considered.

within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. Petitioner claims to represent certain employees of the Employer.

5. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

6. Petitioner seeks to represent a bargaining unit consisting of two employees, “site lead mechanic” (Rick Cox) and “aircraft mechanic” (Jim Peterson), who work at the Naval Air Station, Fallon, Nevada (herein called the Facility). Contrary to Petitioner, the Employer contends that the site lead mechanic is a statutory supervisor. The Employer further asserts that the petition should be dismissed since such a finding, would result in a single person bargaining unit which could not be certified. In its brief, Petitioner contends for the first time that the aircraft mechanic should be included in another bargaining unit of mechanics already represented by Petitioner at the Facility if it is determined that the site lead mechanic is a statutory supervisor.⁴

The Employer has been providing full-service maintenance and support to a single C-12 aircraft at the Facility since January 1, 1999 pursuant to its contract with the United States Navy. The Employer provides all care and maintenance for the aircraft, including fueling, servicing, cleaning, engine changes, troubleshooting, launch and recovery operations, inspections, and preventive maintenance. The C-12 aircraft transports passengers and cargo, and is also used for training by the Navy. From March 1997 through December 31, 1998, another employer-contractor (“AGES”) provided the maintenance support services for the C-12 at the Facility. However, the Employer provided these services at the Facility for about 12 consecutive years prior to March 1997.

The C-12 aircraft is serviced and maintained by the site lead mechanic, Rick Cox, and aircraft mechanic, Jim Peterson, who have been employed by the Employer since January 1, 1999. Cox and Peterson were both employed at the Facility by AGES when it had the C-12 contract with the Navy (March 1997 through December 31, 1998). Prior to their employment with AGES, Cox worked for the Employer at the Facility as the site lead mechanic from about March 1994 until AGES assumed the C-12 contract with the

⁴ At the hearing, the parties were given two specific opportunities to define all the issues in this matter. At no time did Petitioner assert its willingness to represent the aircraft mechanic as part of any other bargaining unit and no evidence was presented regarding this new issue. Further, Petitioner is essentially requesting that the aircraft mechanic be accreted into another existing bargaining unit at the Facility. It would be inappropriate to consider an accretion into another bargaining unit as part of this representation proceeding.

Navy and Peterson worked for the Employer at another location from 1987 until he began working for AGES. They are the only employees at the Facility performing maintenance services on the C-12 aircraft.⁵

There is no dispute that Cox is the highest ranking employee at the Facility with respect to the C-12 aircraft maintenance contract (even though Peterson has a longer tenure with the Employer). He answers directly to the Northwest Regional Manager who is located in Washington State and who visits the Facility approximately once every six months. Cox is the primary and frequently the only Employer representative at the Facility when dealing with the Navy's "On-site Liaison Officer" regarding the scheduling of maintenance or dealing with other maintenance issues. Cox is also wholly responsible for ensuring compliance with the Employer's policies and procedures at the Facility and he is ultimately responsible for scheduling the mechanics' work. Because of Peterson's extensive mechanical experience, Cox has determined that he does not need to closely supervise his work. However, Peterson goes to Cox or telephones him at home whenever he has any problems at the Facility. Cox's willingness to give Peterson significant discretion to perform his job was not the case with the former aircraft mechanic (Ferrenberg) who was closely supervised by Cox and regularly given less complicated work assignments based on Cox's evaluation of his capabilities and work habits. At the hearing, Cox acknowledged that he would have to evaluate any new mechanic's capabilities before he could decide which work assignment to give him/her since these decisions are completely within his discretion. Therefore, Cox has been placed in a position wherein he represents the Employer in dealing with the Navy and in directing employees.

Other significant facts are also undisputed. Cox has the unfettered authority to grant time-off and to grant vacation requests by Peterson. Thus, in his testimony, Cox did not cite any restrictions on his authority to grant vacations and time-off; rather, he testified that in this regard he only needs to contact the regional manager, located in Whidbey Island, Washington, to request additional help at the Facility in Peterson's absence. It is evident, therefore, that Cox can grant vacations and time-off based entirely on his independent judgment.

Cox's role in formally evaluating employees is also based on his independent judgment. He prepares "evaluation reports" based solely on his observations of the aircraft mechanic's work and his remarks in the evaluations are not subject to review. In fact, in an evaluation that he prepared in 1995, Cox's superiors informed him that they were not pleased with a comment he included regarding improvements in the aircraft mechanic's work performance. Nonetheless, Cox refused to delete the comment and the evaluation issued as he prepared it. The evidence also disclosed that evaluation reports

⁵ Jack Ferrenberg was the Employer's aircraft mechanic prior to March 1997. He and Cox were the only employees for the Employer working on the C-12 aircraft during that period. The authority and responsibilities of the site lead mechanic for the C-12 aircraft have not changed in any significant way since at least 1993 when James Clark, the current Northwest Regional Manager, was the site lead mechanic at the Facility.

have been used to discipline employees. Thus, for example, Ferrenberg, the former aircraft mechanic, was disciplined in 1996 based on an evaluation prepared by Cox and “reports” submitted by Cox to Jim Kyker, the Employer’s Navy Program Administrator. The evidence also establishes that the site lead mechanic’s evaluations can include recommendations regarding the discipline and promotion (to other facilities) of the aircraft mechanic⁶. In these circumstances, it is evident that evaluations prepared by the site lead mechanic are not subject to any independent review and that they can and have impacted an employee’s job status.

In addition to evaluation reports, Cox also issues verbal and written consultations. During his previous employment with the Employer as the site lead mechanic, Cox verbally counseled Ferrenberg several times regarding his unsatisfactory work performance, and on November 15, 1996, he issued Ferrenberg a written “counseling statement” wherein Ferrenberg was warned that “It is understood that if your performance or conduct does not meet established standards of the company rules and regulations, you will be subject to additional disciplinary action.” Unlike the evaluation reports, however, the counseling statements can be reviewed and edited by company managers. In the aforementioned November 15th counseling statement, for example, Cox originally warned Ferrenberg that he would be “subject to additional disciplinary action and possible termination”. Cox was directed to delete the reference to possible termination and the reference was deleted, but the rest of the counseling statement was apparently not modified. Therefore, the record establishes that Cox exercises considerable discretion in preparing the counseling statements. Moreover, it is undisputed that he has complete discretion in enforcing the company’s policies and procedures at the Facility through his authority to issue verbal or written counseling statements and evaluation reports although the contents of the written counseling statements are subject to review.

Cox also has the authority to change company holidays and to schedule employees as he sees fit. For example, Cox decides whether he and/or Peterson will go to the Facility whenever the Navy telephones Cox at home in the middle of the night requesting repairs or maintenance services. However, Cox’s discretion in these matters is limited somewhat by the Navy’s flight schedules or maintenance requirements since the Employer is contractually obligated to provide and complete maintenance services for the Navy as needed. Therefore, unplanned requests for maintenance services by the Navy take precedent over company holidays or previously established employee schedules and Cox has little discretion in these circumstances since the work must be done.⁷ Nonetheless, it is undisputed that Cox normally determines the mechanic’s work schedules and can make changes to company holidays based on his independent judgment, absent any unplanned maintenance requests by the Navy.

⁶ In this regard, Clark testified generally that when he held the position of site lead mechanic he made a recommendation to promote.

⁷ The record did not establish how often unplanned requests by the Navy result in changes to the mechanics’ work schedules and/or company holidays.

In determining whether a person is a statutory supervisor, the Board holds that a person must possess, only one of the specific responsibilities listed in Section 2(11) of the Act. Applying Section 2(11) to the duties and responsibilities of any given person requires that the Board determine whether the person in question has authority to use independent judgment on matters that are more than routine and to do so in the interest of management. *Union Square Theatre Management, Inc.*, 326 NLRB No. 17 (1998). In the instant case, there is no dispute that Cox exercises independent judgment over several responsibilities listed in Section 2(11). He disciplines and/or recommends discipline, assigns work, and evaluates employees. He can also grant vacations and time-off requests, and he schedules employees. All of these responsibilities are left to his sole discretion as he is the highest-ranking person at the Facility and it is his responsibility to ensure compliance with company policies and procedures. Cox, therefore, exercises sufficient supervisory responsibilities within the meaning of Section 2(11) of the Act to qualify as a statutory supervisor. *DST Industries, Inc.*, 310 NLRB 957 (1993).

Moreover, it is clear that the Employer has placed Cox in a position to make independent judgments in dealing with and directing the aircraft mechanic. Thus, he is the highest-ranking employee at the Facility and he has been given the apparent authority to act as the onsite person in charge when dealing with the aircraft mechanic and the Navy. These circumstances present further evidence of Cox's status as a statutory supervisor. *Laser Tool, Incorporated*, 320 NLRB 105 (1995).

While the record establishes some factors that generally militate against a finding that Cox is a statutory supervisor, none of these factors is significant enough to affect my conclusion that Cox is a supervisor within the meaning of the Act⁸. For example, Cox and Peterson wear the same overalls and they share essentially the same benefits. However, Cox's wages are almost ten percent higher in view of his additional responsibilities as the site lead mechanic. Although Peterson frequently works by himself at the Facility without any supervision when Cox is not scheduled to work or when he is on vacation, he can telephone Cox at home or contact the Northwest Area Manager if he has a problem. Finally, Cox testified that he does not consider himself a supervisor. Yet, he represented himself as the aircraft mechanic's "immediate supervisor" in at least one evaluation. Thus, none of these militating factors is significant enough to overcome the fact that Cox exercises authority over responsibilities that are primary and secondary indicia of supervisory status.

In summary, and based on the foregoing and the record as a whole, I find that Rick Cox is a statutory supervisor. Accordingly, the petitioned-for unit is comprised of a single employee and should, therefore, be dismissed as inappropriate for collective-bargaining purposes under the Act. *Kuykendall Painting Co.*, 308 NLRB 177, fn. 4 (1992); *Westinghouse Electric Corporation*, 179 NLRB 289 (1969).

⁸ For the same reason and because upon inspection of the document, it appears to be incomplete, I find it is unnecessary to consider the Employer's "Field Operations Procedures Manual" which was introduced by the Employer as an exhibit.

ORDER

IT IS HEREBY ORDERED, that the petition filed in this case, be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 5, 1999.

DATED AT Oakland, California, this 21st day of April, 1999.

/s/ James S. Scott

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